

RESPONSE TO OFFICE ACTION
DATED FEBRUARY 8, 2007

Appln. No. 10/670,854

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July 9, 2007

REMARKS

This is in response to the Office Action dated February 8, 2007. Reconsideration is respectfully requested.

Request for Extension of Time

Applicants request that the time period for response be extended two months, from May 8, 2007 to July 9, 2007 (July 8 being a Sunday). Authorization to charge the extension fee of \$225 (small entity) as required under 37 CFR 1.17(a)(2) is indicated on the attached Credit Card Form PTO-2038.

Applicants note that the rejection based on Saito et al has been withdrawn by the Examiner and that the Examiner has withdrawn the Cal Spas document previously relied on in the rejection of Claims 1-3 under 35 USC 103(a). It is noted that the Cal Spas document bears no date of publication. The date given to the Examiner was the date on which the document was downloaded from the Internet by one of applicants' attorneys, as previously advised.

Claims 1-3 stand rejected in the outstanding Office Action under 35 USC 103(a) as being unpatentable over Nomura in view of Hodak or Farrell. Claim 1 has been amended to incorporate the subject matter of Claim 2, and Claim 2 has been canceled. In addition, a new Claim 11 which is dependent upon Claim 3 is presented for examination.

Claims 1-3 were further rejected under 35 USC 102(b) on grounds that: (1) the meeting of June 5, 2000 constituted use and/or sale under 102; (2) the printing of the brochure on or about November 5, 2000 constitutes public use; and (3) diligence from June 5, 2000 to the filing date of the provisional application has not been shown.

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Reconsideration and allowance of the claims in the form now presented is respectfully requested for the following reasons.

The Rejection under 35 USC 103(a)
Nomura in view of Hodak or Farrell

To supplement the explanation of Nomura given in the Office Action, it is noted that Nomura describes two embodiments of his invention. In Figures 2 and 3, a separate sliding plate 10 which is independent of the housing for television receiver 6 is moved laterally by action of the reciprocating rods 13a and 14a to open the aperture 7 when the receiver is raised or lowered. In Figure 4, a seal 26 engages the lower part of the box when the television receiver is in the raised position. There is no top portion of the housing which extends to a position surrounding the boundaries of the aperture, no rib adjacent the aperture and no recess interfitting with the rib as called for in applicants' main claim embodiment.

Farrell, in Figure 4, shows an enlarged fragmented viewing of a hinged hatch cover 20 pivotally mounted on lugs 25 by a shaft 31, best shown in Figures 2 and 3. Rubber seals 28 and 38 effect a seal when the hatch cover is pivoted to the closed position. The hatch cover is not a part of the top of a housing defining an interior adapted to hold electronic equipment, which enclosure moves between a first position beneath the surface and a second position projecting above the surface as called for in Claim 1. Further, there is nothing by way of a teaching of a projecting surface portion projecting laterally from the housing into interfacing relationship with a surface having a rib projecting upwardly therefrom, wherein the ribs serves as a barrier to the entry of moisture into the aperture, and wherein the rib and a

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recess on the projecting surface part interfit to seal the aperture when the housing is in the first position beneath the aperture.

The patent to Hodak discloses a swimming pool skimmer in which a cover element 24 seals an opening in a passageway 6 which has an open inlet 8 which is attached to an opening in the sidewall 18 of a swimming pool. The cover element 24 is disposed on the wet side (the inside) of the swimming pool, whereas the skimmer body is disposed on the dry side or outside of the pool sidewall (see column 1, lines 62-65). The cover element 24 is constructed of a flexible material and is intended to fit snugly around the peripheral edges 26 of a face plate 22 which is, in turn, bolted to the sidewall 18 of the pool and to the skimmer assembly 2. In Figures 1, 2 and 4, the cover is constructed so that there is a snap fit over a circumferentially extending bead 36. In Figure 3, the bead is eliminated, but the cover element is flexible having a U-shaped lip portion 27' adapted to snugly engaged opposed sides of a raised flange 40 of the face plate. In all examples in Hodak, the cover must be capable of providing a water-tight seal, except when deliberately opened when the skimmer is in operation. This is not what is called for applicants' claims, and it is respectfully submitted that one of ordinary skill in the art would not be lead to modifying Nomura to use the hinged lid of Ferrell with its seals 40 and 45 or the arrangement of Hodak. To do so would require substantial reconstruction of both the primary and the secondary references and only result in applicants' claimed structure through resort to applicants' teachings.

The Rejections under 35 USC 102(b)

In this rejection, the Examiner deems the sales meeting occurring on June 5, 2000 as public use or sale.

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In a first paragraph following the paragraph in which this rejection is made, the Examiner refers to the Exhibits submitted with the various declarations. For the record, the following explanation is made. The advertising brochure distributed at the sales meeting of November 6, 2000 and the trade show on November 8, 2000 is identified in the Valmassoi et al declaration under 37 CFR 1.131, dated by Valmassoi November 9, 2006, as Exhibit A. Also identified in this declaration is the printer's invoice identified as Exhibit B, and the Master Spas STS/LSS Technical Training Manual identified as Exhibit C.

A separate declaration of Terry M. Valmassoi, dated November 7, 2006, identifies declarations of four attendees at the meeting of June 5, 2000 collectively as Exhibit A. The separate Valmassoi declaration also identifies declarations of four attendees at the June 5, 2000 meeting as Exhibit C. If the Examiner is confused or believes other may be confused by the identification scheme used, he is authorized to adopt a scheme he deems satisfactory (as by identifying the declarations of the four attendees as Exhibit D) and to make of record any changes in identification of exhibits he chooses.

As to the information supplied about the completeness of the prototype, at the time of the June 5, 2000 meeting, it was believed to be important to clarify the state of completeness of the prototype unit displayed as the earlier declaration of Mr. Valmassoi erroneously described the prototype as complete, when in fact, considerable work needed to be done before a product that was saleable was available. The important points are that the meeting was in confidence, that no sales efforts were made and the declarations of Mr. Valmassoi and four

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attendees present evidence to that effect. Mr. Valmassoi, as the person responsible for setting up the sales meeting, is a person in position to know that the meeting was treated as a confidential meeting, and he has stated so by way of his declaration. In addition, declarations of four attendees also testify to the effect that they signed confidential disclosure agreements. Still further, a copy of the confidential disclosure form was attached to Mr. Valmassoi's declaration. There is no reason given by the Examiner for doubting the statements made by these declarants, and it is pointed out that severe consequences could flow which would be adverse to the declarants, which could include invalidity of any patent granted on this subject should willful false statements be made. Reconsideration and withdrawal of the rejection based on the Examiner's refusal to consider the declarants' statements as evidence of the fact that the meeting was a confidential meeting is respectfully requested. It is further pointed out that this meeting was not a casual meeting where the public could attend if they wish, but instead was a meeting of applicants' own sales personnel and representatives contractually bound to them to sell product on applicants' behalf. As a further reason for considering the meeting to be confidential, it should be recognized that in the relationship that these people had with the company, the information they received was of a private nature rather than a public nature. The attendees were not customers nor were they casual visitors.

The second reason the Examiner gives for holding public use arises on account of the printing of Master Spas product brochure on or about November 5, 2000. The Examiner holds this to be public use on the basis of the awareness of the invention by personnel of the printing entity more than one

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year prior to the filing of the provisional application. This reason for rejection is respectfully traversed.

It is well settled law that publications of all types from books to product brochures become effective as printed publications on the day they become accessible to the public. See MPEP 2128 citing In re Wyer, 665 F2d 221 (210 USPQ 790) (CCPA 1981). See also Carella v. Starlight, 231 USPQ 644 (Fed. Cir. 1986). In this case, the Court rejected an argument of anticipation based on advertising in a magazine and a mailer prepared prior to the application's filing date. There was no evidence as to when the mailer was received by the addressees and the magazine was not mailed until after the filing date. Although not specifically mentioned, both the magazine and the mailer would obviously be accessible to the printers as is the case with countless other cases where manuscripts have been held to be not accessible to the public unless cataloged in an accessible library or received by an addressee. On the basis of Starlight and In re Wyer and numerous other cases, the critical date would be no earlier than the date of the trade show.

Reconsideration of the Examiner's requirement that a showing of diligence from the meeting date of June 5, 2000 to the filing date of the provisional application must be made. It is a well settled rule that a showing of diligence is only required where there has been no reduction to practice prior to the date of a reference or of the public use of another relied on. See 37 CFR 1.131(b). As can be seen from paragraphs 4 and 5 and Exhibit A and Exhibit C of the Valmassoi declaration referred to above, applicants have a reduction to practice prior to the earliest known brochure or showing of the invention by Cal Spas. There is no justification here for requiring a showing of diligence.

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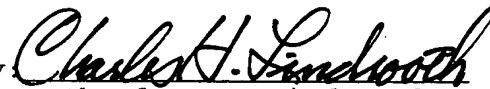
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For the reasons given above, the application is submitted to be in condition for allowance. Nevertheless, if the Examiner believes that there are matters that could be cleared up by telephone, he is invited to call the undersigned at the number given below.

Respectfully submitted,

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